

Observations of Reintegrative Shaming in a Mental Health Court

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Abstract:

This study compares the use of stigmatizing and reintegrative shame – as specified in Braithwaite's Crime, shame and reintegration (1989) – across traditional criminal court and mental health court settings. Items from the Global Observational Ratings Instrument were used to gather data on 87 traditional court cases and 91 mental health court cases, presided over by five different judges. The observational items capture three constructs: respect, disapproval, and forgiveness, as they apply to Braithwaite's theory. We present means tests to examine differences in shaming between court types and judges. Findings show that the mental health court is more likely to use reintegrative shaming and show respect and forgiveness for offenders, and less likely to show disapproval. Similarly, judges who preside in both court types are significantly more likely to practice reintegrative shaming in the mental health court context. We further explore these findings using field notes and illustrate those components of a mental health court that are conducive to reintegrative shaming.

Keywords: Mental health court | Reintegrative shaming | Stigmatization | Court observation

Article:

1. Introduction

Since the late nineties, the number of mental health courts (hereafter MHC) in the U.S. has grown tremendously. While only three such courts were in operation in 1997, the most recent estimate suggests that there are over 200 working MHCs (Consensus Project, 2009). The goal of these courts is to utilize therapeutic jurisprudence principles (Wexler & Winick, 2003) to reduce criminal recidivism and improve the quality of life of defendants with a mental illness by linking them with treatment and services. Empirical studies offer support for the MHC model, suggesting that defendants obtain more treatment while in a MHC (Boothroyd et al., 2003, Cosden et al., 2005, Cosden et al., 2003, Herinckx et al., 2005, McNiel and Binder, 2007 and Ridgely et al., 2007) and that they are less likely to offend than before entering the court (Herinckx et al., 2005, Hiday and Ray, 2010, McNiel and Binder, 2007 and Moore and Hiday, 2006). Research on the MHC model has focused primarily on describing the organizational elements of the court structure and process, such as the use of criminal sanctions (Griffin, Steadman & Petrila, 2002) or level of judicial supervision (Redlich, Steadman, Monahan, Robbins & Petrila, 2006). While these organizational elements are important, it is equally important to understand the theoretical mechanisms at play that underlie potential reductions in criminal recidivism. Criminological theories offer an excellent starting point for such an endeavor, particularly those theories that focus on how social reactions to crime affect subsequent criminal behaviors.

The present analysis examines the presence of theoretical mechanisms that reduce offending outlined in Braithwaite's reintegrative shaming theory (hereafter RST; Braithwaite, 1989). RST suggests that criminal behaviors are deterred when the shame associated with disapproval is reintegrative rather than stigmatizing. Reintegrative shame is a type of disapproval that is communicated in a respectful manner in which there is an effort to avert stigmatization by offering words or gestures of forgiveness to the offender (Braithwaite, 1989). The theory posits that stigmatizing shame, commonly found in criminal processing, increases subsequent criminal behavior; reintegrative shame, in contrast, reduces subsequent criminal behavior. Using data from systematic observation instruments designed to capture key concepts from RST, we compare the presence of stigmatizing and reintegrative shaming that occurs in a traditional criminal court (hereafter TCC) and a MHC. We hypothesize that a MHC is more likely to practice reintegrative shaming, while a TCC is more likely to practice stigmatizing shame. We also examine use of types of shaming across five judges, suggesting that reintegrative shaming may be indicative of judicial style as well as court context. Quantitative results are expanded with field notes to illustrate the various ways in which reintegrative shaming takes place in the MHC setting.

2. Reintegrative shaming theory

RST (Ahmed, 2001 and Braithwaite, 1989) merges several criminological traditions through the concept of shaming and, in doing so, attempts to explain criminal recidivism. The theory suggests that shame can be either stigmatizing (disintegrative) or reintegrative and predicts that stigmatizing shame increases the likelihood of crime, while reintegrative shame reduces criminal

behavior. According to the theory, stigmatizing shame involves labeling offenders as deviant and casting them out of the community. When this occurs, the deviant label becomes a master status; legitimate opportunities are blocked; and offenders seek out similarly labeled individuals and continue their deviant behaviors. Reintegrative shaming focuses on condemning the deviant behavior without condemning the individual. Thus, the behavior is punished but the individual is reaccepted to the community after completing the punishment. What differentiates reintegrative shaming from stigmatization is that reintegrative shaming is finite, ends with words or gestures of forgiveness, and, throughout the shaming process, there is an effort to maintain respect for the shamed individual. RST suggests that when shaming is reintegrative, offenders are unlikely to recidivate because they are accepted back into the community and their morality is strengthened.

One of the challenges in testing RST has been operationalizing reintegrative and stigmatizing shame. Relatively few studies have directly asked respondents about their perceived shaming experiences (Botchkovar and Tittle, 2005, Hay, 2001, Tittle et al., 2003 and Tyler et al., 2007). Instead, most studies have indirectly inferred shaming types based on the theory's original statement (Ahmed, 2001, Losoncz and Tyson, 2007, Lu et al., 2002, Makkai and Braithwaite, 1994 and Miethe et al., 2000; L. N. Zhang & Zhang, 2004; S. X. Zhang, 1995). For example, in the first test of the theory on nursing home managers' compliance with regulatory standards, Makkai and Braithwaite (1994) interviewed inspectors about strategies used when sanctioning non-compliant nursing home managers; then researchers categorized their strategies as either reintegrative or stigmatizing. Similarly, Zhang (1995) measured shaming types of parental controls by interviewing parents of male delinquents who went to court for the first time and asked them to describe their control strategies.

Rather than rely on reported use of sanctions, Ahmed et al. (2001) call for observational research to improve measurements of reintegration and shaming, stating that the theory focuses on how shame is directed at an individual. A study of a Las Vegas drug court by Miethe et al. (2000) demonstrates the need for observational research. The authors argued that because the drug court's goals were consistent with reintegrative shaming, drug court defendants should be less likely to recidivate than those from a control group of traditional court defendants who would receive more stigmatizing shame. Their analysis found just the opposite, as drug court defendants had higher rates of recidivism than those in traditional court. The authors maintain that their findings are not the result of selection effects because the sample was matched on severity and type of drug used, nor are they the result of increased supervision because traditional court participants with probation officers were under similar levels of monitoring. Instead, they explain their unexpected findings by referring to their field observations in a drug court, which found "a clear preponderance of stigmatizing rather than reintegrative comments directed at most offenders" and that "the individual defendant, not the act itself, was clearly the focal point of the judge's common 'tongue lashings'" (Miethe et al., 2000: 537). Thus, the stated intentions of the court were consistent with reintegrative shaming, but its actual practices were not.

3. Methods

The present research takes a step back from the starting point of Mieth et al. (2000) study by first examining whether reintegrative shaming is practiced in the MHC setting and, if so, whether it is more likely to occur in a MHC than in a comparable TCC. To do this, we use items from the Global Observational Ratings Instrument, which was designed specifically to measure concepts relevant to reintegrative and stigmatizing shaming (Ahmed, 2001 and Harris and Burton, 1998). To date, we are only the second study to utilize this instrument.

3.1. Observational settings

The MHC we observed is located in a county in the southeastern United States. Earlier evaluations of this court have found that it effectively reduced criminal recidivism both during court participation and after exit (Hiday and Ray, 2010 and Moore and Hiday, 2006). MHC offenders are referred by court personnel and must have a diagnosis of mental illness, a “dual diagnosis” of mental illness with substance abuse, or a history of treatment for mental illness. Participants are enrolled in the court voluntarily after being screened for suitability. Once an individual is accepted, s/he signs an agreement to comply with the court’s mandates. While participating in a MHC, the defendant’s charges or sentence are placed in abeyance, pending fulfilling the court requirements. In lieu of traditional criminal processing and punishment, defendants are required to return to open court sessions each month for compliance audits. If a defendant remains in compliance with court orders for six consecutive months, s/he graduates from the court, and charges are disposed of positively. Compliance is determined at monthly team meetings that occur before each court session. The team consists of the judge, prosecutor, defense counsel, criminal justice personnel, mental health liaisons, and treatment providers.

Like most MHCs, the court team utilizes court proceedings to achieve defendants’ compliance with treatment and court mandates. The judge speaks directly to defendants and any family, friends, or treatment team members who may accompany them, asking questions about their behavior, well-being, compliance, and progress. Defendants are given the opportunity - and are often encouraged by the judge - to address the court. The judge gives encouragement and praise for efforts and improvements. If a defendant is non-compliant, the judge may express disappointment, ask about reasons for non-compliance, place the defendant in jail or order the defendant be returned to TCC. If non-compliance continues or the defendant obtains additional charges, the team may determine that the defendant is unsuitable for mental health court and reassign him or her to TCC.

Traditional court observations took place in the same county as the MHC in misdemeanor criminal courts from which MHC participants are typically referred. As such, the types of charges in each court were similar, including charges of drug possession, public order offenses, violent crime, property crime and traffic violations.

The sample consists of 178 observations, 87 in TCC and 91 in MHC, over a 6-month observation period (October 2009 to March 2010). Only TCC cases involving formal dispositions are analyzed in the present analysis. Five judges presided over all observed cases. Two of these judges were observed in both the TCC and MHC settings, while the remaining three were only seen in TCC. In an effort to maximize reliability of data gathered during these sessions, three researchers took part in court observations, with at least two of the three observers attending each court session. Observer 1 attended all court sessions, observer 2 attended ten court sessions, and observer 3 attended three court sessions.

3.2. Measurement

To measure reintegrative and stigmatizing shaming in TCC and MHC proceedings, each researcher took detailed field notes during court observations. Immediately following every court session, each researcher independently completed a modified Global Observational Ratings Instrument. This instrument was developed to test the role of shaming in the Australian Reintegrative Shaming Experiments (RISE), in which offenders were randomly assigned to traditional court or restorative justice conferences.¹ It captures differences in shaming types by asking observers directly about reintegrative and stigmatizing shame and separately about respect, disapproval, and forgiveness, concepts that are relevant to the two shaming types. In developing this instrument for the RISE study, Harris and Burton (1998) found a high level of inter-rater reliability among most of the items, suggesting that it reliably measures reintegrative and stigmatizing shame. Subsequent analysis found that the instrument discriminated between reintegrative and stigmatizing shaming in conference and traditional court cases, and that it correlated strongly with self-reported measures of reintegration and stigmatization, supporting the instrument's validity (Ahmed, 2001).

The present analysis uses an 8-point, 11-item scale from this instrument (see Table 1). Each of the observers was familiar with the concepts and predictions of RST. In completing the instrument, observers recorded activities and statements during MHC hearings, such as attendance of defendant supporters, verbal exchanges between judges, attorneys, and defendants, and non-verbal behaviors of team members, participants and persons accompanying them. All of the observers attended preliminary court sessions in each court context and reviewed the particular indicators in the observational items. In doing so we discussed, for example, what might constitute 'support for the offender' or 'being treated like a criminal'. In these examples, we determined that support for the defendant was highest when friends or family attended court with them or that being treated like a criminal was highest when the defendant wore handcuffs or a jail uniform when guided into the courtroom.

Table 1. T-tests of Global Observational Ratings Instrument items for traditional and mental health court cases.

| Observation Items | TC mean (SD) | MHC mean (SD) | t-value |
|--|-----------------|------------------|----------|
| Reintegrative shame | | | |
| 1. How much reintegrative shaming was expressed? | 3.15 (1.81) | 5.26 (2.20) | 7.01*** |
| Stigmatizing shame | | | |
| 2. How much stigmatizing shaming was expressed? | 4.08 (1.57) | 2.41 (1.75) | 6.72*** |
| Respect for offender | | | |
| 3. How much support was the offender given during the court? | 3.20 (1.64) | 5.73 (1.86) | 9.63*** |
| 4. How much approval of the offender as a person was expressed? | 2.29 (1.74) | 5.26 (2.27) | 9.85*** |
| 5. How much respect for the offender was expressed? | 3.29 (1.57) | 5.78 (1.74) | 10.03*** |
| Disapproval of the offender | | | |
| 6. How much disappointment in the offender was expressed? | 2.41 (1.76) | 2.47 (1.95) | 0.21 |
| 7. To what extent was the offender treated as a criminal? | 4.13 (1.47) | 2.77 (1.83) | 5.46*** |
| 8. How often were stigmatizing names and labels used to describe the offender? | 1.62 (0.72) | 1.16 (0.60) | 4.58*** |
| 9. How much disapproval of the offender as a person was expressed? | 2.06 (1.54) | 2.05 (1.65) | 0.01 |
| Forgiveness of the offender | | | |
| 10. How clearly was it communicated to the offender that they could put their actions behind them? | 3.41 (2.21) | 5.58 (2.09) | 6.72*** |
| 11. How much forgiveness of the offender was expressed? | 2.20 (1.75) | 4.70 (2.34) | 8.13*** |

| | | | |
|--|--------|--------|--|
| | N = 87 | N = 91 | |
|--|--------|--------|--|

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

Using the Global Observational Ratings Instrument, we expected that the MHC cases would show higher levels of reintegrative shaming and TCC would show higher levels of stigmatizing shame. Moreover, consistent with RST, we expected that the MHC would have higher values for the respect and forgiveness items but lower values for the disapproval items and vice versa for TCC.

4. Results

4.1. Inter-rater reliability

Given that we are only the second study to use the Global Observational Ratings Instrument, we begin by briefly describing the findings of our inter-rater reliability statistics. Following the Harris and Burton (1998) study, we ran a Pearson Product Moment Correlation statistic and percent of agreement reliability statistic² for each of the items. All of the items were statistically significant ($p = .001$) according to the Pearson correlation statistic, indicating statistical strength in the agreement between observers scores. Furthermore, our percents of agreement, ranging from 99% (item 8) to 71% (item 4), were higher than those previously reported for all of the items except item 9 (83% vs. 84%). High reliability on some of the items was due to the large number of low response values for both observers. For example, item 8 ask, “How often were stigmatizing labels used”. These occurrences were so rare in both TCC and MHC that the mean value was 1.4 for both observers. Our high reliability might also occur because all observers were familiar with RST and the research using these observational items.

4.2. Shaming differences by court and judge

Table 1 presents mean scores and t-tests for each of the observational items by court type. Item 1 asks about the expression of reintegrative shaming toward the defendant. The MHC mean is above the scale mean ($M = 5.26$; $SD = 2.20$), showing a high level of reintegrative shaming, and it is significantly higher than the TCC mean, which is below the scale mean ($M = 3.15$; $SD = 1.81$). Table 1 shows that for each of the respect and forgiveness items (items 3 and 4 and items 10 and 11, respectively), the MHC has values above the mean, indicating high levels of respect and forgiveness. MHC values on these four items are significantly higher than the TCC values, all of which are below the scale mean. The two respect items have an average value that is two and half points higher in the MHC than in the TCC; while the two forgiveness items are twice as high in MHC. For example, item 4 asks, “How much approval of the offender as a person was expressed”, here the MHC has a mean of 5.26 while the TCC has a mean of 2.29.

While the MHC was more likely to practice reintegrative shaming, the TCC was not as stigmatizing as we expected. On item 2 that asks about the expression of stigmatizing shame,

TCC has a significantly higher value than the MHC; however, it is roughly the same value as the scale's mean score ($M = 4.08$; $SD = 1.57$). More notable is the significantly lower stigmatizing value of the MHC ($M = 2.41$; $SD = 1.75$). On item 7 that asks, "To what extent was the offender treated as a criminal", the MHC has a mean value of 2.77 while TCC has a significantly higher mean (4.13) but approximates the mean of the scale. The lack of observed stigmatization in the TCC may be due to what Braithwaite refers to as the "uncoupling of shame and punishment" (1989: 59). The bureaucratic nature of the U.S. criminal justice system may cause offenders not to experience any shame, as they are quickly processed in and out of the system.

In Table 2, we show the mean values and standard deviations for each of the observational items by judge as well as F-values from an ANOVA test across judges. For nearly all of the items there were significant differences across judges. Here we find that Judge 3 scored highest in the overall reintegrative shaming item as well as the respect and forgiveness items, suggesting a more reintegrative judicial style. To tease out the separate impact of judicial style and court context, Table 3 examines differences in shaming types between court context for judges 2 and 3 for whom we have observations in both MHC and TCC contexts. If there were no significant difference between the TCC and MHC for each judge, we might conclude that reintegrative shaming is dependent on judicial style. To the contrary, as illustrated in Table 3, both judges are significantly more reintegrative in a MHC than in a TCC. They have significantly higher values in a MHC on all of the items measuring respect and forgiveness. For example, on item 3 Judge 3 has a mean that is twice as high in MHC ($M = 6.93$; $SD = 1.17$) as in TCC ($M = 3.39$; $SD = 1.50$). While these judges are more likely to shame reintegratively, these findings suggest that the MHC process further facilitates reintegrative shaming over stigmatizing shame. To explore what it is about the MHC process that is tied to reintegrative shaming, we turn to the findings from our field notes.

Table 2. ANOVA test of Global Observational Ratings Instrument items by judge.

| Observations Items | Judge 1 | Judge 2 | Judge 3 | Judge 4 | Judge 4 | F-value |
|--|----------------|----------------|----------------|----------------|----------------|---------|
| | mean (SD) | mean (SD) | mean (SD) | mean (SD) | mean (SD) | |
| Reintegrative shame | | | | | | |
| 1. How much reintegrative shaming was expressed? | 4.14 (2.04) | 4.20 (2.27) | 4.94 (2.32) | 2.70 (1.95) | 3.00 (1.48) | 3.34** |
| Stigmatizing shame | | | | | | |
| 2. How much stigmatizing shaming | 5.57 | 3.33 | 2.29 | 3.60 | 4.42 | 8.42*** |

| | | | | | | |
|--|----------------|----------------|----------------|----------------|----------------|----------|
| was expressed? | (1.51) | (1.76) | (1.73) | (1.78) | (1.44) | |
| Respect for offender | | | | | | |
| 3. How much support was the offender given during the court? | 3.57 (2.30) | 4.32 (2.07) | 5.60 (2.16) | 3.50 (1.58) | 2.83 (1.11) | 6.71*** |
| 4. How much approval of the offender as a person was expressed? | 3.14 (1.86) | 3.72 (2.47) | 4.81 (2.61) | 2.00 (1.41) | 2.42 (1.88) | 4.64*** |
| 5. How much respect for the offender was expressed? | 2.86 (1.46) | 4.61 (1.99) | 5.33 (2.11) | 3.00 (1.63) | 3.33 (1.56) | 5.92*** |
| Disapproval of the offender | | | | | | |
| 6. How much disappointment in the offender was expressed? | 6.00 (1.00) | 2.32 (1.73) | 2.33 (1.81) | 2.60 (1.96) | 1.75 (1.14) | 8.22*** |
| 7. To what extent was the offender treated as a criminal? | 6.00 (2.00) | 3.57 (1.69) | 2.31 (1.48) | 4.60 (0.97) | 4.25 (1.29) | 12.79*** |
| 8. How often were stigmatizing names and labels used to describe the offender? | 1.57 (0.79) | 1.37 (0.66) | 1.38 (0.84) | 1.40 (0.52) | 1.50 (0.52) | 0.22 |
| 9. How much disapproval of the offender as a person was expressed? | 4.86 (1.86) | 1.98 (1.56) | 1.83 (1.34) | 2.10 (1.60) | 1.92 (1.38) | 6.43*** |
| Forgiveness of the offender | | | | | | |
| 10. How clearly was it communicated to the offender that they could put their actions behind | 5.14 (2.54) | 4.50 (2.28) | 5.15 (2.61) | 3.00 (2.11) | 3.08 (1.78) | 3.15* |

| | | | | | | |
|---|----------------|----------------|----------------|----------------|----------------|---------|
| them? | | | | | | |
| 11. How much forgiveness of the offender was expressed? | 3.43 (2.23) | 3.26 (2.23) | 4.50 (2.72) | 2.20 (1.81) | 2.33 (1.92) | 3.98*** |
| | TC = 7 | TC = 40 | TC = 18 | TC = 10 | TC = 12 | |
| | MHC = 0 | MHC = 61 | MHC = 30 | MHC = 0 | MHC = 0 | |

*p<0.05, **p<0.01, ***p<0.001.

Table 3. T-tests of Global Observational Ratings Instrument items by judge and court context.

| Observation Items | Judge 2 | | | Judge 3 | | |
|---|----------------|----------------|-----------|----------------|----------------|------------|
| | TC | MHC | t-value | TC | MHC | t-value |
| Reintegrative shame | | | | | | |
| 1. How much reintegrative shaming was expressed? | 3.43 (2.00) | 4.70 (2.31) | - 2.87** | 2.50 (1.20) | 6.40 (1.40) | - 9.82*** |
| Stigmatizing shame | | | | | | |
| 2. How much stigmatizing shaming was expressed? | 4.05 (1.32) | 2.85 (1.85) | 3.54*** | 3.61 (1.82) | 1.50 (1.07) | 5.07*** |
| Respect for offender | | | | | | |
| 3. How much support was the offender given during the court? | 3.08 (1.76) | 5.13 (1.86) | - 5.55*** | 3.39 (1.50) | 6.93 (1.17) | - 9.12*** |
| 4. How much approval of the offender as a person was expressed? | 2.38 (1.98) | 4.61 (2.38) | - 4.92*** | 1.83 (1.04) | 6.60 (1.25) | - 13.59*** |
| 5. How much respect for the offender was expressed? | 3.48 (1.78) | 5.36 (1.77) | - 5.22*** | 3.17 (1.10) | 6.63 (1.35) | - 9.2*** |
| Disapproval of the offender | | | | | | |
| 6. How much disappointment in the offender was expressed? | 2.05 (1.22) | 2.49 (1.99) | - 1.26 | 2.17 (1.72) | 2.43 (1.89) | - 0.49 |
| 7. To what extent was the offender | 3.95 | 3.33 | 1.83 | 3.44 | 1.63 | 5.09*** |

| | | | | | | |
|--|----------------|----------------|-----------|----------------|----------------|------------|
| treated as a criminal? | (1.30) | (1.88) | | (1.38) | (1.07) | |
| 8. How often were stigmatizing names and labels used to describe the offender? | 1.65 (0.74) | 1.18 (0.53) | 3.72*** | 1.78 (0.88) | 1.13 (0.73) | 2.74** |
| 9. How much disapproval of the offender as a person was expressed? | 1.73 (1.22) | 2.15 (1.73) | – 1.34 | 1.78 (1.11) | 1.87 (1.48) | – 0.22 |
| Forgiveness of the offender | | | | | | |
| 10. How clearly was it communicated to the offender that they could put their actions behind them? | 3.83 (2.35) | 4.95 (2.13) | – 2.49** | 2.28 (1.49) | 6.87 (1.25) | – 11.45*** |
| 11. How much forgiveness of the offender was expressed? | 2.33 (1.77) | 3.87 (2.31) | – 3.59*** | 1.33 (0.97) | 6.40 (1.22) | – 14.98*** |

*p<0.05, **p<0.01, ***p<0.001.

5. Mental health courts as reintegrative

5.1. Respect

The MHC's organizational process differs significantly from a TCC in terms of respecting offenders. In a MHC, defendants arrive at court with assurance that their attorney will be present and their case will be heard on the scheduled date. Moreover, because the decision-making process is largely handled prior to public court proceedings (in the pre-court team meeting), the time that defendants are involved in open court procedures is not spent on discovery or decision-making. Interactions between the judge and each defendant in a MHC are conducive to greater respect for several reasons. The judge greets defendants with thanks for coming to court. The judge always uses the defendant's first name and typically engages the defendant in a conversation by asking about personal matters, such as housing, employment, school activities and familial relationships. The judge speaks directly to the defendant, rather than to counsel as was often observed in TCC. Expressions of encouragement and praise are common in MHC as are applause from court personnel and fellow defendants. A conversation between Judge 2 and Carolyn³ illustrates the level of respect that is maintained for defendants in MHC:

Judge 2 calls Carolyn to the bench. They exchange hellos and Judge 2 says, "I heard you got a new apartment?" Carolyn smiles and says, "Yeah, it's really nice. It's been a struggle finding a new place with everything going on. My old roommate was a pain and I don't have any furniture, but this guy I moved in with is pretty cool, and it's way better than staying in a

shelter.” Judge 2 says, “That’s great. You know... you really *deserve* a nice place.” Then the judge leans forward and says “Listen Carolyn, a friend of mine, a police officer, he told me that you were hanging around the wrong people. He said these people were drinking and a fight broke out, and he saw you there. He didn’t say you were drinking, but he did ask me to talk to you about hanging out with these folks.” Carolyn puts her hand up as though she is asking permission to talk. The judge nods at her and she says, “I wasn’t drinking. It was really, really hard, but I did not drink.” Judge 2 nods and says, “I know it is. Carolyn, do you know that big building on the corner of First and Second St.? Do you know what they do in that building?” Carolyn nods her head no. Judge 2 says, “It’s a multi-million dollar research center that studies the problems caused by alcohol. Do you know what that means? That means that a lot of people have problems with alcohol. It’s not just a problem that you have or a couple of people have. If that were the case, they wouldn’t have as big of a building. A lot of people are suffering like you, and I know that you are one of the people that can get better.”

In this exchange, one sees the respect given the defendant in contrast to TCC where individuals are treated more like docket numbers than individuals. Because the MHC limits the number of defendants it docket, it is not under the same organizational pressures as a TCC and can devote more time to each defendant, but MHC’s limited volume of cases cannot fully explain the level of respect more often displayed in MHC.

5.2. Disapproval of the offender

Reintegrative shaming involves disapproval of the deviant act instead of disapproval of the deviant offender. In doing so the person delivering the shame must avoid disapproval that involves labeling the offender according to his or her deviant behavior. According to the stated goals of the MHC we observed, court officials see defendants’ mental illnesses as a primary contributor to their criminal offending. As such, the court team does not focus on the guilt or innocence associated with defendants’ criminal charges but instead on providing encouragement or positive sanctions that address their mental health and service needs. This focus on the underlying causes of criminal behavior itself could reduce the likelihood of labeling; however, even beyond this, the MHC team takes extra care to avoid stigmatizing defendants. Defendants are always referred to as “participants” or “clients” rather than “defendants”. There is very little discussion about their specific charges. While all defendants have a history of mental health diagnosis, there is no mention of their specific illnesses. The judge will sometimes say of mental health treatment, “we don’t need to talk about that in front of everyone”. We observed that attempts to avoid stigmatization were often done by identifying with defendants’ struggles. Instead of pointing out behavioral or moralistic differences between the defendant and themselves - such as asking “what were you thinking” or “why would you do that” - judges would compare defendants’ deviance to their own. This is best illustrated with the interaction between Judge 2 and Greg,⁴ a defendant who missed the past two court sessions:

Judge 2 asked Greg, “Where have you been the past two months?” Greg tells the judge, “I felt compelled to go into the wilderness last month.” In a scattered way, Greg begins explaining how he got into his car, where he drove to and concludes with “so yeah, last month when I was supposed to be here, I was in the mountains. I knew I was supposed to be here. I told myself that I have a good job and some friends and that I was going to mess it all up.” Judge 2 says, “Why do you think that happened Greg?” Greg replies, “I guess... well it’s probably because I didn’t take my medication.” Judge 2 says, “Greg, I’m gonna share something with you. I have dangerously high blood pressure. It’s so high that I have to take medication. You know why I never forget to take my medication? Because if I don’t take my medication, I might not be here next month. I won’t be here for my wife or my family, and that scares me, and it scares them.” Judge 2 pauses. The lawyers and case managers seem a little surprised by the confession. Judge 2 then pats his chest and says “Greg... I got my stuff” then he points at Greg and says “you got yours... but we both need to take our stuff not only because it’s important to us but because there are people who care about us.” Greg nods his head and Judge 2 says “everyone, let’s give Greg some encouragement” as he leads the court in applause.

5.3. Forgiveness

The interaction between Judge 2 and Greg also highlights the forgiveness that occurs in MHC. The judge could have threatened Greg with jail time, kicked him out of MHC, or even charged him with a failure to appear. Instead, the court openly acknowledged its acceptance of “slip-ups”. Before one court session, Judge 3 told the court:

“This court is going to give you an opportunity to be accountable for yourself. We are all here because we want to support you. We know there might be some slip-ups along the way. We accept that... because we believe that *you* deserve a better life.”

Forgiveness of the court for slip-ups sometimes results in its handling of defendants’ additional charges. If a defendant were arrested between MHC appearances, the judge might choose to add these charges to their docket. These new charges would be dismissed along with their original charges when the defendant completes the court process. In such cases, the judge will often discuss the additional charges and their willingness to forgive them in open court. An interaction between Clark*, a defendant who tested positive for cocaine, and Judge 3 illustrates this:

Judge 3 says, “I hear you had a positive drug and alcohol screen.” Clark says, “Yes. It’s been a difficult time, but I am glad you accepted me back.” The judge asks Clark how long he has been using drugs and he tells him 21 years. He then asks if drugs have made his life better in those 21 years. Clark says no. Judge 3 says, “You haven’t been safer or happier with 21 years of use. Keep those 21 years as a reminder. Remember it doesn’t help you; it hurts you. You need to start over. You messed up. And you know it. We are willing to work with you but you *need* to take ownership over your treatment because the drugs are never gonna stop calling to you. You deserve to be safe, sober and happy. No one is better than you.”

In another instance Judge 2 tells a defendant who was arrested during the prior weekend,

“Remember when we met in the other [traditional criminal] court? You told me you wanted to be here. But you can’t be here all the time. And when you’re not here you *haveto* avoid getting new charges. Charges mean jail and the entire reason you are in here is because you don’t need jail.”

Judge 3 tells another defendant who missed her first court session,

“We don’t expect you to perfect. No one can be perfect. Lord knows, I’m not perfect. But we do expect you try your hardest. Right now you’re not trying to even be *here* when you’re supposed to. You need to start caring about this.”

Use of judicial discretion by the MHC judge gives the MHC team the ability to forgive and work with those defendants whom they see as making progress. The presence of judicial discretion in MHC is important given the development of determinate sentencing in TCC settings, which is intended to minimize disparate treatment by reducing judicial discretion. Determinant sentencing has been the subject of debate for over 20 years. Its proponents argue that reducing judicial discretion results in more equitable sentencing. However, existing research indicates that attempts to increase uniformity in court sentencing (i.e. mandatory minimums, sentencing guidelines, and truth-in-sentencing legislation) have not reduced sentencing disparities (Koons-Witt, 2009). Standardized sanctions may not be compatible with the effective communication of reintegrative shame because it discourages judges from offering words or gestures of forgiveness. Observations support the effect of the significant judicial discretion allowed in a MHC being conducive to forgiveness and, ultimately, reintegrative shaming.

An important finding from our observations is the role of “graduation” in reintegrative shaming. Graduation from a specialty court not only signifies that the defendant complied with all of the court mandates, but it also signifies the termination of shame and the decertification from deviance. It is the pinnacle of reintegrative shaming in the MHC process. The graduation ceremony begins when the judge calls the defendant’s name at the beginning of the court session. As the defendant approaches the bench the judge leads the courtroom in applause before giving the graduation certificate and shaking hands. The judge verbally congratulates the defendant and then gives him an opportunity to address the court. Often family members accompany the defendant on ‘graduation day’ to join in the celebration. The district attorney, then, informs the defendant that charges have been dropped and the judge allows them to leave the courtroom while all other defendants must remain until the docket is completed. This graduation ceremony includes “words or gestures of forgiveness” in which the community recognizes and applauds non-deviant progress and forgives past deviance by disposing of charges. For these participants, graduation marks the end of a criminal justice process, as they are welcomed back into the community of law-abiding citizens by persons who represent that community.

6. Discussion

This paper reports findings from an observational study, which compares elements of reintegrative shaming of defendants in a TCC and in a MHC. Analyses indicate that MHC proceedings contain more elements of reintegrative shaming than TCC proceedings do and that the presence of these elements is likely a result of MHC organization and stated goals as well as the particular styles of the judges. Judicial style was taken into account in the present analysis to account for the extent of reintegration used by two judges who were observed in both a TCC and a MHC. Findings suggest that the level of reintegration may only be partially dependent on individual judicial style as their use of shame varied across court contexts (i.e., the adjudication style of each judge was different in TCC than it was in MHC). Field notes illustrated how particular organizational elements of MHC may be conducive to reintegrative shaming. Specifically, MHC allows for direct interaction between judge and defendant, which can effectively provide clearer communication of respect, and judicial discretion, and which can allow greater forgiveness.

While TCC proceedings contained a higher level of stigmatizing shame, the proceedings observed revealed less stigmatizing shaming than expected. This finding could be explained by what Braithwaite's calls the "uncoupling of shame and punishment" (1989: 59). TCC proceedings rely heavily on the need for efficient case processing. The number of cases on the docket alone restricts the opportunity to provide shaming in any form. For example, in the present study many of the case proceedings observed in a TCC were heard and adjudicated in as little as 5 min. According to Braithwaite (1989), stigmatizing shaming results when disapproval of the offender is expressed, negative labels are attached to the offender, or degradation ceremonies are carried out. It is likely that given the minimal time spent on each case in open court and the frequency of plea bargaining in TCC, there is not adequate opportunity to stigmatize a defendant.

Although efforts were made to ensure an adequate research design, this study is not without its methodological limitations. Defendants in MHC are referred and accepted by court personnel based on their characteristics, most important of which are severity of charge(s) and previous mental health treatment or diagnoses. Because defendants are not randomly assigned for participation in a MHC, there may be differences in other characteristics of MHC and TCC defendants that are not accounted for in the present analysis. A second limitation is that we were unable to triangulate our observations with self-reported experiences of shame. As such, we are unable to provide a valid measure of subjective shame.

Although MHCs grew out of drug treatment courts, and both rely on therapeutic jurisprudence principles, not all problem solving courts operate in the same manner. While Miethe et al. (2000) did not use observational data, their brief field notes suggest stigmatizing shaming in drug court, which differs from our findings of reintegrative shaming in MHC. The reintegrative shaming we observed could be unique to this MHC; thus, future research should attempt to observe shaming in multiple MHCs to examine whether it is a characteristic of all MHCs. It is also possible that drug courts are not as conducive to reintegrative shaming as MHCs. To

examine this two of us observed a drug court that was presided over by Judge 3. Our brief observations suggest why shame might operate differently by specialty court type. First, the process of determining compliance in the drug court is much less subjective. In a MHC, compliance is determined through discussions in monthly pre-court team meetings; however, in drug court compliance is primarily achieved through drug screenings. Drug tests allow the court to determine compliance more frequently during the time between court sessions. Second, the drug court we observed had a structured sanctioning system for non-compliance. For example, having a positive drug screen resulted in a minimum stay of 24 h in jail. Griffin et al.

(2002) suggest that MHCs may be reluctant to use criminal sanctions because they handle less serious offenses (typically misdemeanors) and the perceived cause of non-compliance is mental illness. In terms of reintegrative shaming, the use of such sanctions makes it difficult to offer forgiveness when the defendant relapses. Finally, we observed a notable difference in how Judge 3 interacted with defendants in a drug court and in a MHC. Generally speaking drug court defendants were much more likely to be treated like criminals. Our observations are consistent with Haimowitz (2002) who noted that the basic distinction between a MHC and a drug court is that being mentally ill and not complying with treatment is not a crime, whereas possessing or using drugs is. In terms of reintegrative shaming theory, defendants in drug court are labeled according their criminal offense and experience the stigmatizing shame of that label.

7. Conclusion

Our study indicates that MHCs use reintegrative shaming and avoid stigmatizing shame. We expect this process to be one mechanism by which MHCs reduce criminal recidivism. Because graduation from MHC represents a concentration of reintegrative shaming elements, one would expect MHC graduates to experience more reintegrative shaming and, consequently, have lower recidivism than MHC participants who fail to graduate. Future research should measure reintegrative shaming with defendant self-reports as well as with observations of each defendant's exchanges in MHC to test whether graduates do indeed receive more reintegrative shaming and whether it makes a difference in recidivism.

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